

1       **WO**

2

3

4

5

6                   IN THE UNITED STATES DISTRICT COURT

7                   FOR THE DISTRICT OF ARIZONA

8

9       IN RE Mortgage Electronic Registration )       MDL DOCKET NO. 09-2119-JAT  
10      Systems (MERS) Litigation                )  
11    )  
12    )  
13    )  
14    )  
15    )  
16    )  
17    )  
18    )  
19    )  
20    )  
21    )  
22    )  
23    )  
24    )  
25    )  
26    )  
27    )  
28    )

---

12       In the transfer order establishing this consolidated multidistrict litigation (“MDL”),  
13       the Judicial Panel on Multidistrict Litigation (“Panel”) stated, “IT IS FURTHER ORDERED  
14       that claims unrelated to the formation and/or operation of the MERS system are  
15       simultaneously remanded to their respective transferor courts.” (Doc. #1.) The parties  
16       contest which claims in each of the various cases relate to the formation and/or operation of  
17       MERS.<sup>1</sup> This Order addresses the following cases (transferred by Doc. #1, Schedule A):

<u>First Plaintiff's Name</u>	<u>Arizona Case Number</u>	<u>Original Jurisdiction Case Number</u>
<i>Robinson</i>	CV 09-227-TUC-JAT	4:09-227 (Arizona)
<i>Vargas</i>	CV 09-2616-PHX-JAT	2:09-2309 (C. D. California)
<i>Lopez</i>	CV 10-0078-PHX-JAT	3:09-180 (Nevada)
<i>Goodwin</i>	CV 10-0079-PHX-JAT	3:09-306 (Nevada)
<i>Green</i>	CV 10-0080-PHX-JAT	3:09-374 (Nevada)
<i>Dalton</i>	CV 10-0081-PHX-JAT	3:09-534 (Nevada)

---

1       The parties have fully briefed this issue pursuant to the Court’s Order on Practices  
2       and Procedures. (Doc. #25.)

1     **I. General Interpretation of the Transfer Order**

2         In the transfer order, the Panel transferred to this Court all allegations within these  
3 actions that “the various participants in MERS formed a conspiracy to commit fraud and/or  
4 that security instruments are unenforceable or foreclosures are inappropriate due to MERS’s  
5 presence as a party” or that otherwise concern “the formation and operation” of MERS.  
6 (Doc. #1.) However, the Panel simultaneously remanded unrelated claims to their transferor  
7 courts, finding that “plaintiffs’ claims relating to loan origination and collection practices do  
8 not share sufficient questions of fact with claims regarding the formation and operation” of  
9 MERS and their inclusion “would needlessly entangle the litigation in unrelated, fact-  
10 intensive issues.” *Id.*

11         Accordingly, this Court will remand claims that, although naming MERS as a  
12 defendant, allege conduct primarily related to loan origination and collection practices, or  
13 otherwise stray from the common factual core of the MDL. This is a narrower reading than  
14 the construction urged by Moving Defendants<sup>2</sup> in their Motion to Remand Claims (Doc. #54)  
15 and their subsequent Reply (Doc. #134), but a broader one than was urged by Plaintiffs in  
16 their Response (Doc. #101). Any cause of action that in essence turns on the formation or  
17 operation of MERS, no matter how framed, will remain with the undersigned.

18     **II. Claims on Which the Parties Do Not Agree**

19         Within these six class actions transferred to the MDL there are eight types of claims  
20 over which the parties disagree. This Order will discuss the appropriateness of remand for  
21 each claim, treating each type of claim in turn. On the claims for which the appropriate

---

22  
23         <sup>2</sup> Mortgage Electronic Registration Systems, Inc. and MERSCORP, Inc. (collectively,  
24 “MERS”), United Guaranty Corporation, CitiMortgage, Inc., CR Title Services, Inc., Federal  
25 Home Loan Mortgage Corporation, GMAC Mortgage, LLC, Executive Trustee Services,  
26 Inc., Homecomings Financial, LLC, National City Bank, National City Mortgage, National  
27 City Corporation, PNC Financial Services Group, Inc., JPMorgan Chase Bank, N.A., EMC  
28 Mortgage Corporation, California Reconveyance Company, and The Bank of New York  
Mellon f/k/a The Bank of New York as Successor Trustee to JPMorgan Chase Bank, N.A.,  
as Trustee for the Certificate Holders of Structured Asset Mortgage Investments II, Inc. Bear  
Stearns ALT-A Trust, Mortgage Pass-Through Certificates Series 2005-10.

1 disposition is undisputed, the Court adopts the parties' determinations and will not discuss  
2 those claims in detail.<sup>3</sup>

3 **A. Slander of Title**

4 Plaintiffs assert claims for slander of title in *Goodwin* (Fourth Claim) and *Lopez*  
5 (Fourth Claim). In both cases, Plaintiffs allege that certain defendants slandered the title of  
6 plaintiffs' property by recording Trustee's Deeds Upon Sale. Plaintiffs allege that the  
7 trustee's sales were "wrongful and invalid" because they were not "conducted in accordance  
8 with N.R.S. 107.080 and pursuant to Nevada common law."<sup>4</sup> While Plaintiffs do not make  
9 the manner of the alleged violation entirely clear, it appears to the Court that Plaintiffs are  
10 alleging that foreclosure was initiated by an improper party. As the defendants would be  
11 proper parties unless the operation of MERS created deficiencies in the quality of their title,  
12 these claims for slander of title must be related to the operation of MERS. Therefore, these  
13 claims have been transferred to the MDL.

14 **B. Wrongful Filing of Unlawful Detainer**

15 This claim in *Goodwin* (Fifth Claim) alleges that Defendant Saxon Mortgage  
16 wrongfully filed an action for unlawful detainer against Plaintiff Gabel. Plaintiff alleges that  
17 Saxon Mortgage failed to comply with several of the statutory requirements to conduct a  
18 trustee's sale, yet still served Plaintiff with a notice to quit the premises and filed an unlawful  
19 detainer action against Plaintiff. (Doc. #45-1, ¶¶ 195-200.) On its face, this claim is  
20 unrelated to the formation or operation of MERS.

21 Saxon Mortgage argues that some of Plaintiff Gabel's allegations may be inartfully  
22 pled and actually implicate issues related to the operation of MERS.<sup>5</sup> For example, as to  
23 Plaintiffs allegation that "No notice of default and election to sell the property located at  
24 1447 Kinglet Drive was mailed to Plaintiff Heather Gabel via registered or certified mail"

---

25  
26 <sup>3</sup> These claims are listed in Schedule B, below.

27 <sup>4</sup> See Doc. #45-1, ¶¶ 173, 178, 183, and 188; Doc. #59-1, ¶¶ 157, 161, and 166.

28 <sup>5</sup> See Doc. #95 at 2.

1 (Doc. #45-1, ¶ 196), Saxon Mortgage speculates that Plaintiffs' theory is actually that  
2 Plaintiff Gabel received a purported notice, but that it was sent by an allegedly improper  
3 party (due to some deficiency created by the operation of MERS).

4 After weighing this concern, this Court still finds this claim remanded to the transferor  
5 court. If, on remand, Plaintiffs support this claim with arguments related to the operation of  
6 MERS, Defendant may move before the transferor court to transfer this claim to the MDL.  
7 If the transferor court grants a motion to transfer this claim to the MDL, within two business  
8 days of receiving that Order, MERS must file a copy of that Order in both the MDL case, and  
9 the associated member case in Arizona.

10 **C. Wrongful Foreclosure.**

11 Plaintiffs assert claims for wrongful foreclosure in *Goodwin* (Third Claim), *Lopez*  
12 (Third Claim), *Green* (First Claim), and *Dalton* (First Claim). In each case, Plaintiffs allege  
13 that the foreclosures were commenced pursuant to a deed of trust on which MERS was  
14 named the beneficiary as nominee for the lender.<sup>6</sup> Additionally, Plaintiffs allege that such  
15 foreclosures were commenced by a trustee acting as an agent for MERS, the beneficiary as  
16 nominee for the lender, or for a successor beneficiary to whom MERS assigned its interests  
17 as the beneficiary on a deed of trust, as nominee for the lender.<sup>7</sup> The alleged wrongfulness  
18 of the foreclosures in all four cases stems from the proposition that MERS is not a "true" or  
19 "proper" beneficiary.<sup>8</sup> Plaintiffs argue that if MERS is not a true beneficiary, then a trustee  
20 acting as an agent for MERS (or for an assignee of MERS's interests as a deed of trust

---

22 <sup>6</sup> See Doc. #45-1, ¶ 161 ("[E]ach deed of trust at issue named MERS as the beneficiary  
23 on the deed of trust"); Doc. #59-1, ¶ 142 (same); CV 10-0081-PXH-JAT, Doc. #1, ¶ 128  
24 ("Each and every Plaintiff has a deed of trust that states that the beneficiary and/or  
beneficiary as the nominee of the lender is MERS . . ."); Doc. #35, ¶ 106 (same).

25 <sup>7</sup> See Doc. #45-1, ¶ 121; Doc. #59-1, ¶ 92; CV 10-0081-PXH-JAT, Doc. #1, ¶ 134;  
26 Doc. #35, ¶ 109(a).

27 <sup>8</sup> See, e.g., Doc. #45-1, ¶ 159(i) ("MERS is not a true beneficiary"); Doc. #59-1, ¶  
140(i) (same); Doc. #35, ¶ 92 ("[MERS] is not a beneficiary"); CV 10-0081-PXH-JAT, Doc.  
28 #1, ¶ 135 ("MERS was not a proper beneficiary").

1 beneficiary) is not a “proper party” to initiate foreclosure proceedings, resulting in wrongful  
2 foreclosure liability for both MERS and its agents.<sup>9</sup>

3 These wrongful foreclosure claims clearly relate to the formation and operation of  
4 MERS. Further, nothing within these claims is based on allegations specific to the  
5 origination of particular loans or likely to involve this Court in fact-intensive inquiries  
6 unrelated to the formation and operation of MERS. Therefore, each of the claims for  
7 wrongful foreclosure was transferred.

#### 8 **D. Unjust Enrichment**

9 Plaintiffs assert claims for unjust enrichment in *Dalton* (Second Claim), *Green*  
10 (Second Claim), *Vargas* (Eighth Claim), *Goodwin* (Second Claim) and *Lopez* (Second  
11 Claim).

12 In *Vargas* (Eighth Claim), the alleged basis of unjust enrichment relates exclusively  
13 to loan origination issues. Plaintiffs allege that they were unable to understand the terms of  
14 the loan due to “the failure to translate the documents or disclosures into English” and other  
15 failures of disclosure. (CV 09-2616-JAT-PHX, Doc. #1, ¶¶ 124-126.) These allegations are  
16 unrelated to the formation and operation of MERS. Thus, this claim is remanded to the  
17 transferor court.

18 In *Dalton* and *Green* and there are two distinguishable bases for a claim of unjust  
19 enrichment. There are issues concerning the origination of the loans,<sup>10</sup> but there are also  
20

---

21 <sup>9</sup> See, e.g., Doc. #45-1, ¶ 159 (“[T]he parties issuing the notice of default and/or  
22 issuing a notice of trustee’s sale on the property were not the proper parties to do so . . . Any  
23 appointment by MERS of a successor trustee or any assignment to a successor beneficiary  
24 was invalid, as MERS is not a true beneficiary under the deed of trust”); Doc. #59-1, ¶ 140  
25 (same); Doc. #35, ¶ 116 (“No true and no beneficiary [sic] under the deed of trust ever  
directed a sale of any of the properties owned by Plaintiffs in which MERS is named as  
beneficiary or nominee of the beneficiary/lender”); CV 10-0081-PXH-JAT, Doc. #1, ¶ 145  
(same).

26  
27 <sup>10</sup> Doc. #35, ¶ 125 (“All borrowers who were targeted for and lured into the mortgages  
sold by Defendants were handicapped in understanding the terms of those loans. This  
28 constituted a misrepresentation that caused Plaintiffs to make their monthly payments from

1 claims for unjust enrichment based on theories relating to the operation of MERS.<sup>11</sup> Because  
2 either set of alleged facts would be logically sufficient to support a claim of unjust  
3 enrichment, this Court will bifurcate the unjust enrichment claims in *Dalton* and *Green*. In  
4 both cases, a claim for unjust enrichment on theories related to MERS will remain with the  
5 undersigned as part of the MDL and a claim for unjust enrichment based on loan origination  
6 issues is remanded to the transferor court.

7 In *Goodwin* (Second Claim) and *Lopez* (Fifth Claim), the allegations forming the basis  
8 of the unjust enrichment claims for most plaintiffs are based on issues related to the  
9 formation and operation of MERS. However, several plaintiffs' claims for unjust enrichment  
10 are premised only on fraud and misrepresentation at the time of the loan's origination. Thus,  
11 the unjust enrichment claims of *Lopez* Plaintiffs Evenson and Plaintiff Graves (Doc. #59-1,  
12 ¶ 132 (b-c)) and *Goodwin* Plaintiffs Barba and Wilburn and Plaintiffs Diaz (Doc. #45-1, ¶  
13 151 (e, g)) are remanded to the transferor court. The undersigned will retain the unjust  
14 enrichment claims of the other plaintiffs in *Goodwin* and *Lopez* as part of the MDL.

#### 15 **E. Conspiracy to Commit Fraud and Conversion**

16 Plaintiffs assert a claim for conspiracy to commit fraud and conversion in *Robinson*  
17 (Seventh Claim) and *Vargas* (Sixth Claim). Moving Defendants argue that these claims  
18 were transferred to this Court as the Panel explicitly countenanced that "allegations that the  
19 various participants in MERS formed a conspiracy to commit fraud" (Doc. #1 at 2) should  
20  
21

---

22  
23 the cash that represented the equity in their home to the Defendants. Moreover, upon  
24 information and belief, the variety of additional and separate payments charged for services  
25 and other items tangential to the loan were prohibitive. The result is that Plaintiffs, and each  
26 class member, assumed financial burdens that they would not otherwise have assumed. . .");  
CV 10-0081-PXH-JAT, Doc. #1, ¶ 154 (same).

27 <sup>11</sup> See, e.g., Doc. #35, ¶ 126 ("Plaintiffs would not have continued to make payments  
28 on the loans if the Defendants had properly disclosed the discharge of the obligations on the  
notes to the investors."); CV 10-0081-PXH-JAT, Doc. #1, ¶ 155 (same).

1 be centralized in the MDL. However, Plaintiffs and other defendants<sup>12</sup> (“Responding  
2 Defendants”) argue that these claims have been remanded because the causes of action allege  
3 loan origination issues, specifically “violation of the Truth In Lending Act, the Real Estate  
4 Settlement Procedures Act, the Home Ownership and Equity Protection Act, the Fair  
5 Housing Act” and various state statutes.<sup>13</sup>

6 As these claims allege a conspiracy to commit actions which give rise to the claims  
7 which all parties agree have been remanded, retaining these conspiracy claims would involve  
8 the Court in fact-intensive inquiries which the Panel has precluded from the MDL.  
9 Therefore, the claims for conspiracy to commit fraud and conversion in *Robinson* and *Vargas*  
10 are remanded to their respective transferor courts.

11 **F. Intentional Infliction of Emotional Distress**

12 Plaintiffs assert a claim for intentional infliction of emotional distress in *Robinson*  
13 (Ninth Claim). Plaintiffs and Responding Defendants contend that this claim has been  
14 remanded as the entire theory for this claim rests on alleged actions relating to improper  
15 origination of loans. Moving Defendants contend that this claim has been transferred,  
16 although they do not contest that a similarly worded claim in *Vargas* (Ninth Claim) has been  
17 remanded. The difference between the two cases is that MERS is a named defendant in  
18 *Robinson*. As MERS was not engaged in the origination of loans, Moving Defendants

---

21 <sup>12</sup> Bank of America, N.A., Countrywide Home Loans, Inc., Merrill Lynch & Co., First  
22 Franklin Financial Corporation, LaSalle Bank, N.A., ReconTrust Company, N.A., Wells  
23 Fargo Bank, N.A., First Horizon Home Loan Corporation, Bank of New York, as successor  
24 to J.P. Morgan Chase Bank, N.A., as Trustee for BSALTA-2005-1, Bank of New York  
25 Mellon d/b/a Bank of New York as Trustee for the Certificate Holders CWALT, Inc.  
Alternative Loan Trust 2005-45 Pass Through Certificates Series 2005-45, Bank of America  
26 d/b/a LaSalle Bank as Trustee for Washington Mutual Mortgage Pass Through Certificates  
WMALT Series 2006-AR5 Trust, America’s Servicing Company, and America’s Wholesale  
Lender, *See Certain Defendants’ Response to First Motion to Remand*, Doc. #104.

27 <sup>13</sup> *See* CV 09-227-TUC-JAT, Doc. #91, ¶¶ 171-177; CV 09-2616-PHX-JAT, Doc. #5,  
28 ¶¶ 139-145.

1 theorize that this claim must include some other aspect related to the formation or operation  
2 of MERS. (Doc. #134 at 11.)

3 This Court will not make that inference about Plaintiff's pleadings. On its face, this  
4 claim rests on issues related to the origination of loans which have been remanded. It may  
5 be that the Plaintiffs erred in naming MERS or it may be that they failed to allege facts  
6 related to the formation and operation of MERS that give rise to MERS's liability for this  
7 tort. In either case, remand is appropriate at this point.

8 **G. Injunctive Relief**

9 First, injunctive relief is not a cause of action but a remedy. However, it has been  
10 separately listed as a claim in *Dalton* (Fifth Claim), *Green* (Fifth Claim), *Goodwin* (Eighth  
11 Claim), *Lopez* (Eighth Claim), *Vargas* (Eleventh Claim) and *Robinson* (Tenth Claim). There  
12 is no reason to foreclose the remedy of injunctive relief either in the proceedings before this  
13 Court or in the proceedings before the transferor courts. Therefore, each of these claims for  
14 relief will be retained in part (i.e., to the extent they are based on claims related to the  
15 formation and operation of MERS), and remanded in part.

16 The Tenth Claim in *Robinson* presents a special case as it includes specific allegations  
17 regarding the recordation of Plaintiffs Robinson's property that are not listed elsewhere in  
18 the complaint.<sup>14</sup> This portion of the claim for injunctive relief is remanded.

19  
20  
21  
22

---

23 <sup>14</sup> See Doc. #59-1, ¶ 227 ("Defendant First American Title Company failed to properly  
24 record its interest with the County Recorder for Pima County prior to noticing two trustee's  
25 sales of the Robinson Residence. . . A.R.S. § 33-804 mandates that a Notice of Substitution  
26 of Trustee be recorded. . . 'at the time of the substitution.' . . . The Notice of Substitution of  
27 Trustee appointing First American Title Company was not filed in the Pima County  
28 Recorder's office until January 28, 2009, almost a month after the pending Notice of  
Trustee's Sale was filed on December 31, 2008. Therefore, it logically follows that First  
American Title recorded the impending Notice of Trustee's prematurely, and therefore the  
Notice of Trustee Sale is ultimately invalid.")

## **H. Declaratory Relief**

2        The Declaratory Judgment Act “does not provide an independent cause of action.”  
3 *S. Jackson & Son, Inc. v. Coffee, Sugar & Cocoa Exch., Inc.*, 24 F.3d 427, 431 (2d Cir.  
4 1994). Because of that fact, the appropriateness of remand depends on the underlying causes  
5 of action for which declaratory relief is sought.

6        In *Robinson* (Eleventh Claim), Plaintiffs seek declaratory judgment based on its First  
7 Second, Third, Fourth, Fifth, Sixth, and Seventh Claims, all of which were remanded, and  
8 its Eight Claim, which was retained. In the four other cases—*Green* (Sixth Claim), *Dalton*  
9 (*Sixth Claim*), *Lopez* (Ninth Claim), and *Goodwin* (Ninth Claim)—where Plaintiffs seek  
10 declaratory judgment, Plaintiffs’ theories supporting relief are not clearly set forth. But as  
11 each of those cases contain some substantive claims that are remanded and others that are  
12 retained, these claims for declaratory relief should be bifurcated. Therefore, each of these  
13 claims for relief will be retained in part (i.e., to the extent they are based on claims related  
14 to the formation and operation of MERS), and remanded in part.

## I. Conclusion

16 In light of the complexity of this Order, it may be helpful to set forth the disposition  
17 of each claim in tabular form.

## **Schedule A - Claims On Which The Parties Disagree**

Type of Claim	Case (Claim)	Disposition
Slander of Title	<i>Goodwin</i> (Fourth)	Retained
	<i>Lopez</i> (Fourth)	Retained
Wrongful Filing of Unlawful Detainer	<i>Goodwin</i> (Fifth)	Remanded
Wrongful Foreclosure	<i>Dalton</i> (First)	Retained
	<i>Lopez</i> (Third)	Retained
	<i>Goodwin</i> (Third)	Retained
	<i>Green</i> (First)	Retained

1	Unjust Enrichment	<i>Dalton</i> (Second) <i>Goodwin</i> (Second) <i>Green</i> (Second) <i>Lopez</i> (Second) <i>Vargas</i> (Eighth)	Remanded in part Retained Remanded in part Remanded in part Remanded
2	Conspiracy to Commit Fraud and Conversion	<i>Robinson</i> (Seventh) <i>Vargas</i> (Sixth)	Remanded Remanded
3	Intentional Infliction of Emotional Distress	<i>Robinson</i> (Ninth)	Remanded
4	Injunctive Relief	<i>Dalton</i> (Fifth) <i>Green</i> (Fifth) <i>Goodwin</i> (Eighth) <i>Lopez</i> (Eighth) <i>Robinson</i> (Tenth) <i>Vargas</i> (Eleventh)	Remanded in part Remanded in part Remanded in part Remanded in part Remanded in part Remanded in part
5	Declaratory Relief	<i>Dalton</i> (Sixth) <i>Green</i> (Sixth) <i>Goodwin</i> (Ninth) <i>Lopez</i> (Ninth) <i>Robinson</i> (Eleventh)	Remanded in part Remanded in part Remanded in part Remanded in part Remanded in part
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			
26			
27			
28			

### Schedule B - Claims On Which All Parties Agree

Type of Claim	Case (Claim)	Disposition
Violation of Truth in Lending Act	<i>Robinson</i> (First) <i>Vargas</i> (First)	Remanded Remanded
Violation of Real Estate Settlement Act	<i>Robinson</i> (Second)	Remanded
Violation of Home Ownership and Equity Protection Act	<i>Robinson</i> (Third) <i>Vargas</i> (Second)	Remanded Remanded

1	Violation of Fair Housing Act	<i>Robinson</i> (Fourth) <i>Vargas</i> (Third)	Remanded Remanded
2	Violation of Fair Debt Collection Practices Act	<i>Robinson</i> (Fifth)	Remanded
3	Violation of Arizona Consumer Fraud Act	<i>Robinson</i> (Sixth)	Remanded
4	Fraud in the Inducement	<i>Goodwin</i> (First) <i>Lopez</i> (First) <i>Vargas</i> (Tenth)	Remanded Remanded Remanded
5	Violation of California Translation Act	<i>Vargas</i> (Fourth)	Remanded
6	Violation of California Business and Professions Code	<i>Vargas</i> (Fifth)	Remanded
7	Intentional Infliction of Emotional Distress	<i>Vargas</i> (Ninth)	Remanded
8	Declaratory Relief	<i>Vargas</i> (Twelfth)	Remanded
9	Class Action Claim for Violation of California Business and Professions Code	<i>Vargas</i> (Thirteenth)	Remanded
10	Conspiracy to Commit Fraud Related to MERS System	<i>Goodwin</i> (Sixth) <i>Lopez</i> (Fifth) <i>Robinson</i> (Eighth) <i>Vargas</i> (Seventh)	Retained Retained Retained Retained
11	Conspiracy to Commit Fraud by Creation, Operation and Use of the MERS System	<i>Dalton</i> (Fourth) <i>Green</i> (Fourth)	Retained Retained
12	Conspiracy to Commit Wrongful Foreclosure Related to the MERS System	<i>Goodwin</i> (Seventh) <i>Lopez</i> (Sixth)	Retained Retained
13	Conspiracy to Commit Wrongful Foreclosure by Creation, Operation and Use of the MERS System	<i>Dalton</i> (Third) <i>Green</i> (Third)	Retained Retained

26 Accordingly,

27 **IT IS ORDERED** that with respect to *Robinson* (CV 09-227-TUC-JAT), claim 8 and  
28 part of claims 10 and 11 remain with the undersigned as part of the MDL and claims 1-7, 9

1 and part of claims 10 and 11 are remanded to the transferor court. Of particular note, all  
2 claims against Defendant First American Title Company are remanded. To accomplish this  
3 remand, the Clerk of the Court is directed to bifurcate *Robinson* into two cases; the Clerk of  
4 the Court shall draw and assign a new Phoenix case number to the portion of the *Robinson*  
5 case that is remaining with the undersigned and the Clerk of the Court shall consolidate that  
6 case number into the MDL as a member case. The Clerk of the Court shall transfer the  
7 original *Robinson* case number back to the transferor court (Chief Judge Roll).

8       **IT IS FURTHER ORDERED** that with respect to *Vargas* (CV 09-2616-PHX-JAT)  
9 claim 7 and part of claim 11 remain with the undersigned as part of the MDL and claims 1-6,  
10 8-10, 12, 13 and part of claim 11 are remanded to the transferor court. MERS shall file a  
11 copy of this Order with the transferor court within the next two business days.

12       **IT IS FURTHER ORDERED** that with respect to *Lopez* (CV 10-0078-PHX-JAT)  
13 claims 3, 4, 5 and 6 and part of claims 2, 8 and 9 remain with the undersigned as part of the  
14 MDL and claim 1 and part of claims 2, 8 and 9 are remanded to the transferor court.<sup>15</sup> MERS  
15 shall file a copy of this Order with the transferor court within the next two business days.

16       **IT IS FURTHER ORDERED** that with respect to *Goodwin* (CV 10-0079-PHX-JAT)  
17 claims 3, 4, 6 and 7 and part of claims 2, 8 and 9 remain with the undersigned as part of the  
18 MDL and claims 1 and 5 and part of claims 2, 8 and 9 are remanded to the transferor court.  
19 MERS shall file a copy of this Order with the transferor court within the next two business  
20 days.

21       **IT IS FURTHER ORDERED** that with respect to *Green* (CV 10-0080-PHX-JAT)  
22 claims 1, 3 and 4 and part of claims 2, 5 and 6 remain with the undersigned as part of the  
23 MDL and part of claims 2, 5 and 6 are remanded to the transferor court. MERS shall file a  
24 copy of this Order with the transferor court within the next two business days.

25  
26  
27       

---

<sup>15</sup> In *Lopez*, the Second Amended Class Action Complaint (Doc. #59-1) lacks a  
28 Seventh Claim.

1           **IT IS FURTHER ORDERED** that with respect to *Dalton* (CV 10-0081-PHX-JAT)  
2 claims 1, 3 and 4 and part of claims 2, 5 and 6 remain with the undersigned as part of the  
3 MDL and part of claims 2, 5 and 6 are remanded to the transferor court. MERS shall file a  
4 copy of this Order with the transferor court within the next two business days.

5           **IT IS FURTHER ORDERED** that the Clerk of the Court shall file a copy of this  
6 Order in each member case listed on page 1.

7           **IT IS FURTHER ORDERED** that with respect to any claims that are staying with  
8 this Court, Defendants shall answer or otherwise respond to those claims within the time  
9 limits set in the Practice and Procedure Order (Doc. #25); with respect to any claims that are  
10 remanded to the transferor courts, Defendants shall answer or otherwise respond to those  
11 claims within fifteen days of this Order, unless any order of the transferor court is  
12 inconsistent with this Order, in which case, the order of the transferor court shall control.

13           **IT IS FURTHER ORDERED** that if any Plaintiff in any case addressed in this Order  
14 seeks leave to amend the complaint in the future, Plaintiff shall move to amend only those  
15 claims before this Court that Plaintiff concedes relate to the formation or operation of MERS.  
16 With respect to any claims that the moving Plaintiff seeks to amend that said Plaintiff does  
17 not concede relate to the operation or formation of MERS, such motion to amend must be  
18 filed before the transferor court. If leave to amend is granted, and if any Defendant argues  
19 that a claim of the amended complaint relates to the operation or formation of MERS, said  
20 Defendant must move before the transferor court to transfer those claims to the MDL. If the  
21 transferor court grants a motion to transfer some (or all) claims to the MDL, within two  
22 business days of receiving that Order, MERS must file a copy of that Order in both the MDL  
23 case, and the associated member case in Arizona.

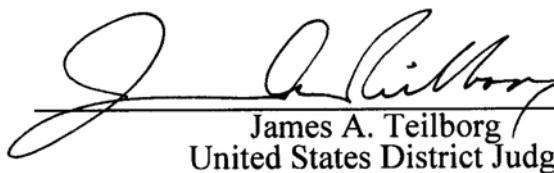
24           **IT IS FURTHER ORDERED** within 5 days of this Order, MERS shall file all  
25 documents related to a case bifurcated and remanded herein into the record of the transferor  
26 court in that particular case. (Because this Court will not transfer the entire MDL file and

27

28

1 docket to any individual transferor court, this will insure the Judge in the transferor court has  
2 a complete record for that specific case).

3 DATED this 22<sup>nd</sup> day of March, 2010.

4  
5   
6 James A. Teilborg  
7 United States District Judge  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28